

CHAPTER 103
DISCIPLINARY PROCEEDINGS

[Prior to 7/10/02, see 645—101.7(272C) to 645—101.10(272C)]

645—103.1(156) Definitions.

“*Board*” means the board of mortuary science.

“*Discipline*” means any sanction the board may impose upon licensees.

“*Licensee*” means an individual licensed pursuant to Iowa Code section 156.4 to practice as a funeral director in Iowa and a person issued an establishment license pursuant to Iowa Code section 156.14 to establish, conduct, or maintain a funeral establishment or cremation establishment in Iowa.

645—103.2(17A,147,156,272C) Disciplinary authority. The board is empowered to administer Iowa Code chapters 17A, 147, 156, and 272C and related administrative rules for the protection and well-being of those persons who may rely upon licensed individuals and establishments for the performance of mortuary science services within this state or for clients in this state. To perform these functions, the board is broadly vested with authority to review and investigate alleged acts or omissions of licensees, to determine whether disciplinary proceedings are warranted, to initiate and prosecute disciplinary proceedings, to establish standards of professional conduct, and to impose discipline pursuant to Iowa Code sections 17A.13, 147.55, 272C.3 to 272C.6 and 272C.10 and Iowa Code chapter 156.

645—103.3(17A,147,156,272C) Grounds for discipline against funeral directors. The board may initiate disciplinary action against a licensed funeral director based on any of the following grounds:

103.3(1) Fraud in procuring a license. Fraud in procuring a license includes, but is not limited to, an intentional perversion of the truth in making application for a license to practice in this state, which includes the following:

a. False representation of a material fact, whether by word or by conduct, by false or misleading allegation, or by concealment of that which should have been disclosed when making application for a license in this state, or

b. Attempting to file or filing with the board or the department of public health any false or forged diploma or certificate or affidavit or identification or qualification in making an application for a license in this state.

103.3(2) Professional incompetency. Professional incompetency includes, but is not limited to:

a. A substantial lack of knowledge or ability to discharge professional obligations within the scope of practice.

b. A substantial deviation from the standards of learning or skill ordinarily possessed and applied by other practitioners in the state of Iowa acting in the same or similar circumstances.

c. A failure to exercise the degree of care which is ordinarily exercised by the average practitioner acting in the same or similar circumstances.

d. Failure to conform to the minimal standards of acceptable and prevailing practice of a funeral director in this state.

103.3(3) Deceptive practices. Deceptive practices are grounds for discipline, whether or not actual injury is established, and include:

a. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of mortuary science.

b. Use of untruthful or improbable statements in advertisements. Use of untruthful or improbable statements in advertisements includes, but is not limited to, an action by a licensee in making information or intention known to the public which is false, deceptive, misleading or promoted through fraud or misrepresentation.

- c. Acceptance of any fee by fraud or misrepresentation.
- d. Falsification of business records through false or deceptive representations or omissions.
- e. Submission of false or misleading reports or information to the board including information supplied in an audit of continuing education, reports submitted as a condition of probation, or any reports identified in this rule.
- f. Knowingly misrepresenting any material matter to a prospective purchaser of funeral merchandise, furnishings, or services.
- g. Representing oneself as a funeral director when one's license has been suspended, revoked, or surrendered, or when one's license is on inactive status.
- h. Permitting another person to use the licensee's license for any purposes.
- i. Misrepresenting the legal need or other requirement for embalming.
- j. Fraud in representations as to skill or ability.

103.3(4) Unethical, harmful or detrimental conduct. Licensees engaging in unethical conduct or practices harmful or detrimental to the public may be disciplined whether or not injury is established. Behaviors and conduct which are unethical, harmful or detrimental to the public may include, but are not limited to, the following actions:

- a. Practice outside the scope of the profession which requires licensure by a different professional licensing board.
- b. Any violation of Iowa Code section 144.32.
- c. Verbal or physical abuse, improper sexual contact, or making suggestive, lewd, lascivious, offensive or improper remarks or advances, if such behavior occurs within the practice of mortuary science or such behavior otherwise provides a reasonable basis for the board to conclude that such behavior would place the public at risk within the practice of mortuary science.
- d. Betrayal of a professional confidence.
- e. Engaging in a professional conflict of interest.
- f. Failure to comply with universal precautions for preventing transmission of infectious diseases as issued by the Centers for Disease Control and Prevention of the United States Department of Health and Human Services.
- g. Embalming or attempting to embalm a deceased human body without first having obtained authorization from a family member or representative of the deceased, except where embalming is done to meet the requirements of applicable state or local law. However, a funeral director may embalm without authority when, after due diligence, no authorized person can be contacted and embalming is in accordance with legal or accepted standards in the community, or the licensee has good reason to believe that the family wishes embalming. The order of priority for those persons authorized to permit embalming is found in Iowa Code section 142A.2(2). If embalming is performed under these circumstances, the licensee shall not be deemed to be in violation of the prohibition in this paragraph.
- h. Failure to keep and maintain records as required by Iowa Code chapter 156 and associated rules.

103.3(5) Unlicensed practice.

- a. Practicing mortuary science when one's license has been suspended, revoked, or surrendered, or when one's license is on inactive status.
- b. Practicing mortuary science within an unlicensed funeral or cremation establishment.
- c. Permitting an unlicensed employee or other person under the licensee's control or supervision to perform activities requiring a license.
- d. Knowingly aiding, assisting, procuring, advising, or allowing a person to unlawfully practice mortuary science, or aiding or abetting a licensee, license applicant or unlicensed person in committing any act or omission which is grounds for discipline under this rule or is an unlawful act by a nonlicensee under Iowa Code section 156.16.

103.3(6) Lack of proper qualifications.

a. Continuing to practice as a funeral director without satisfying the continuing education mandated by 645—Chapter 102.

b. Acting as a preceptor or continuing education provider without proper board approval or qualification.

c. Habitual intoxication or addiction to the use of drugs, or impairment which adversely affects the licensee's ability to practice in a safe and competent manner.

d. Any act, conduct, or condition, including lack of education or experience and careless or intentional acts or omissions, that demonstrates a lack of qualifications which are necessary to ensure a high standard of professional care as provided in Iowa Code section 272C.3(2) "b."

103.3(7) Negligence by the licensee in the practice of the profession. Negligence by the licensee in the practice of the profession includes:

a. A failure to exercise due care including negligent delegation of duties or supervision of employees or other individuals, whether or not injury results.

b. Any conduct, practice or condition which impairs a licensee's ability to safely and skillfully practice the profession.

103.3(8) Professional misconduct.

a. Obtaining, possessing, attempting to obtain or possess, or administering controlled substances without lawful authority.

b. Violation of a regulation or law of this state, another state, or the United States, which relates to the practice of mortuary science, including, but not limited to, Iowa Code chapters 272C, 144, 147, 156, 523A, 523I, 566, and 566A; board rules, including rules of professional conduct set forth in 645—Chapter 100; and regulations promulgated by the Federal Trade Commission relating to funeral services or merchandise, or funeral or cremation establishments, as applicable to the profession. Any violation involving deception, dishonesty or moral turpitude shall be deemed related to the practice of mortuary science.

c. Engaging in any conduct that subverts or attempts to subvert a board investigation, or failure to fully cooperate with a licensee disciplinary investigation or investigation against a nonlicensee, including failure to comply with a subpoena issued by the board or to respond to a board inquiry within 30 calendar days of the date of mailing by certified mail of a written communication directed to the licensee's last address on file at the board office.

d. Revocation, suspension, or other disciplinary action taken by a licensing authority of this state, another state, territory, or country. A stay by an appellate court shall not negate this requirement; however, if such disciplinary action is overturned or reversed by a court of last resort, discipline by the board based solely on such action shall be vacated.

103.3(9) Willful or repeated violations. The willful or repeated violation of any provision of Iowa Code chapter 147, 156, or 272C.

103.3(10) Failure to report.

a. Failure by a licensee or an applicant for licensure to report in writing to the board any revocation, suspension, or other disciplinary action taken by a licensing authority within 30 days of the final action.

b. Failure of a licensee or an applicant for licensure to report, within 30 days of the action, any voluntary surrender of a professional license to resolve a pending disciplinary investigation or action.

c. Failure to notify the board of a criminal conviction within 30 days of the action, regardless of the jurisdiction where it occurred.

d. Failure to notify the board within 30 days after occurrence of any judgment or settlement of malpractice claim or action.

e. Failure to report another licensee to the board for any violations listed in these rules, pursuant to Iowa Code section 272C.9.

f. Failure to report a change of name or address within 30 days after it occurs.

103.3(11) Failure to comply with board order.

a. Failure to comply with the terms of a board order or the terms of a settlement agreement or consent order, or other decision of the board imposing discipline.

b. Failure to pay costs assessed in any disciplinary action.

103.3(12) Conviction of a felony. Conviction of a felony related to the practice of mortuary science or the conviction of any felony that would affect the licensee's ability to practice mortuary science. A copy of the record of conviction or plea of guilty shall be conclusive evidence. "Conviction" shall include any plea of guilty, including Alford pleas, or finding of guilt whether or not judgment or sentence is deferred. Any felony involving deception, dishonesty or moral turpitude shall be deemed related to the practice of mortuary science. "Moral turpitude" includes any act which is so contrary to justice or good morals or is so reprehensible as to undermine the public confidence and trust imposed upon the licensee as a funeral director in this state.

103.3(13) Violation of the terms of an initial agreement with the impaired practitioner review committee or violation of the terms of an impaired practitioner recovery contract with the impaired practitioner review committee.

103.3(14) Failure to comply with conditions of Iowa Code section 142C.10.

645—103.4(17A,147,156,272C) Grounds for discipline against funeral establishments and cremation establishments. The board may initiate disciplinary action against a funeral establishment or cremation establishment, at time of license application or thereafter, based on all grounds set forth in Iowa Code section 156.15, summarized as follows:

103.4(1) The licensee or applicant has been convicted of a felony or any crime related to the practice of mortuary science or implicating the establishment's ability to safely perform mortuary science services, or if the applicant is an association, joint stock company, partnership, or corporation, the managing officer or owner has been convicted of such a crime under the laws of this state, another state, or the United States.

103.4(2) The licensee or applicant, or any owner or employee of the establishment has violated Iowa Code chapter 156, rule 645—103.3(17A,147,156,272C), or any other rule promulgated by the board.

103.4(3) The licensee or applicant knowingly aided, assisted, procured, or allowed a person to unlawfully practice mortuary science.

103.4(4) The licensee or applicant failed to engage in or ceased to engage in the business described in the application for licensure.

103.4(5) The licensee or applicant failed to keep and maintain records as required by Iowa Code chapter 156 or rules promulgated by the board.

645—103.5(17A,147,156,272C) Method of discipline. The board has the authority to impose the following disciplinary sanctions:

1. Revoke a license.
2. Suspend a license until further order of the board or for a specific period.
3. Prohibit permanently, until further order of the board, or for a specific period, the licensee's engaging in specified procedures, methods, or acts.
4. Place a licensee on probation and impose such conditions as the board may reasonably impose including, but not limited to, requiring periodic reporting to the board designated features of the licensee's practice of mortuary science.
5. Require additional education or training. The board may specify that a designated amount of continuing education be taken in specific subjects and may specify the time period for completing these courses. The board may also specify whether that continuing education be in addition to the continuing education routinely required for license renewal. The board may also specify that additional continuing education be a condition for the termination of any suspension or reinstatement of a license.
6. Require a reexamination.

7. Order a physical or mental evaluation, or order alcohol and drug screening within a time specified by the board.
8. Impose civil penalties not to exceed \$1,000 against an individual licensed as a funeral director, or not to exceed \$10,000 against a licensed funeral establishment or cremation establishment. Civil penalties may be imposed for any of the disciplinary violations specified in 645—103.3(17A,147,156,272C) and 103.4(17A,147,156,272C), as applicable.
9. Issue a citation and warning, or reprimand.
10. Refuse to issue or renew a license.
11. Such other sanctions allowed by law as may be appropriate.

645—103.6(17A,147,156,272C) Board discretion in imposing disciplinary sanctions. Factors the board will consider when determining the nature and severity of the disciplinary sanction to be imposed, including whether to assess and the amount of civil penalties, include:

1. The relative serious nature of the violation as it relates to ensuring a high standard of professional care to the citizens of this state.
2. Whether the amount of a civil penalty will be a substantial deterrent to the violation.
3. The circumstances leading to the violation.
4. The risk of harm to the public.
5. The economic benefits gained by the licensee as a result of the violation.
6. The interest of the public.
7. Evidence of reform or remedial action.
8. Time lapsed since the violation occurred.
9. Whether the violation is a repeat offense following a prior cautionary letter, disciplinary order, or other notice of the nature of the infraction.
10. The clarity of the issues involved.
11. Whether the violation was willful and intentional.
12. Whether the nonlicensee acted in bad faith.
13. The extent to which the licensee cooperated with the board.
14. Whether a licensee holding an inactive, suspended, restricted or revoked license engaged in practices which require licensure.
15. Any extenuating factors or other countervailing considerations.
16. Number and seriousness of prior violations or complaints.
17. Such other factors as may reflect upon the competency, ethical standards, and professional conduct of the licensee.

645—103.7(156) Order for mental, physical, or clinical competency examination or alcohol or drug screening. A licensee who is licensed by the board is, as a condition of licensure, under a duty to submit to a mental, physical, or clinical competency examination, including alcohol or drug screening, within a time specified by order of the board. Such examination may be ordered upon a showing of probable cause and shall be at the licensee's expense.

103.7(1) Content of order. A board order for a mental, physical, or clinical competency examination shall include the following items:

- a. A description of the type of examination to which the licensee must submit.
- b. The name and address of the examiner or of the evaluation or treatment facility that the board has identified to perform the examination on the licensee.
- c. The time period in which the licensee must schedule the required examination.
- d. The amount of time which the licensee has to complete the examination.
- e. A requirement that the licensee sign necessary releases for the board to communicate with the examiner or the evaluation or treatment facility.

f. A requirement that the licensee cause a report of the examination results to be provided to the board within a specified period of time.

g. A requirement that the licensee communicate with the board regarding the status of the examination.

h. A concise statement of the facts relied on by the board to order the evaluation.

103.7(2) Alternatives. Following issuance of the examination order, the licensee may request additional time to schedule or complete the examination or may request the board to approve an alternative examiner or treatment facility. The board in its sole discretion shall determine whether to grant such a request.

103.7(3) Objection to order. A licensee who is the subject of a board order and who objects to the order may file a request for hearing. The request for hearing must be filed within 30 days of the date of the examination order, and the request for hearing shall specifically identify the factual and legal issues upon which the licensee bases the objection. The hearing shall be considered a contested case proceeding and shall be governed by the provisions of 645—Chapter 11. On judicial review of a board decision in a contested case involving an objection to an examination order, the case will be captioned in the name of Jane Doe or John Doe to maintain the licensee's confidentiality.

103.7(4) Closed hearing. Any hearing on an objection to the board order shall be closed pursuant to Iowa Code section 272C.6(1).

103.7(5) Order and reports confidential. An examination order, and any subsequent examination reports issued in the course of a board investigation, are confidential investigative information pursuant to Iowa Code section 272C.6(4).

103.7(6) Admissibility. In the event the licensee submits to evaluation and subsequent proceedings are held before the board, all objections shall be waived as to the admissibility of the examining physicians' or health care providers' testimony or examination reports on the grounds that they constitute privileged communication. The medical testimony or examination reports shall not be used against the licensee in any proceeding other than one relating to licensee discipline by the board.

103.7(7) Failure to submit. Failure of a licensee to submit to a board-ordered mental, physical, or clinical competency examination or to submit to alcohol or drug screening constitutes a violation of the rules of the board and is grounds for disciplinary action.

645—103.8(17A,147,156,272C) Informal discussion. If the board considers it advisable, or if requested by the affected licensee, the board may grant the licensee an opportunity to appear before the board or a committee of the board for a voluntary informal discussion of the facts and circumstances of an alleged violation. The licensee may be represented by legal counsel at the informal discussion. The licensee is not required to attend the informal discussion. By electing to attend, the licensee waives the right to seek disqualification, based upon personal investigation of a board or staff member, from participating in making a contested case decision or acting as a presiding officer in a later contested case proceeding. Because an informal discussion constitutes a part of the board's investigation of a pending disciplinary case, the facts discussed at the informal discussion may be considered by the board in the event the matter proceeds to a contested case hearing and those facts are independently introduced into evidence. The board may seek a consent order at the time of the informal discussion. If the parties agree to a consent order, a statement of charges shall be filed simultaneously with the consent order.

These rules are intended to implement Iowa Code chapters 17A, 147, 156, and 272C.

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